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RUEHRL/AMEMBASSY BERLIN PRIORITY 0214  
RUEHBS/AMEMBASSY BRUSSELS PRIORITY 0107  
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RUEHTC/AMEMBASSY THE HAGUE PRIORITY 0333  
RUEHKO/AMEMBASSY TOKYO PRIORITY 3290  
RUCNDT/USMISSION USUN NEW YORK PRIORITY 2388

C O N F I D E N T I A L SECTION 01 OF 04 PHNOM PENH 000343

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USUN FOR M. SIMONOFF

E.O. 12958: DECL: 05/28/2019  
TAGS: [PREL](#) [PGOV](#) [KJUS](#) [EAID](#) [PHUM](#) [CB](#)  
SUBJECT: KHMER ROUGE TRIBUNAL: SOK AN ENTHUSIASTIC ABOUT  
PROPOSED ANTI-CORRUPTION MECHANISM

REF: A. PHNOM PENH 333  
[1](#)B. PHNOM PENH 316  
[1](#)C. PHNOM PENH 264

Classified By: AMBASSADOR CAROL A. RODLEY FOR REASONS 1.4 (B,D)

[1](#)1. (C) SUMMARY: In a palpably relaxed meeting May 22 with Ambassador at Large for War Crimes Issues Clint Williamson, Deputy Prime Minister Sok An reiterated his strong support for a proposed new anti-corruption mechanism at the Khmer Rouge Tribunal (Ref A). Within minutes of reviewing desired qualifications for the job of a proposed anti-corruption "Counselor," Sok An reeled off the names of three Cambodian candidates. Referring to rules by which international judges are selected for participation in the Extraordinary Chambers in the Courts of Cambodia (ECCC), Sok An suggested that the selection of a mutually agreeable nominee could be based on Cambodia providing a list of candidates and the UN selecting one. He was silent on the suggestion that the UN propose any candidates. Ambassador Williamson reviewed the outlines of the proposal again, noted that he would consult with UN/OLA Assistant Secretary General Peter Taksoe-Jensen, and would convey any immediate responses through Ambassador Rodley.

[1](#)2. (C) Ambassador Williamson expressed hope that Taksoe-Jensen could visit Phnom Penh in early June to reach agreement on the anti-corruption Counselor mechanism, if not on a name. Ambassador Rodley emphasized the sense of Phnom Penh-based donors that independence would be a vital quality of the Counselor and that the selection would need to be based on multiple candidates. Eager to settle the mechanism and process for selecting the Counselor, Sok An was also attentive to the details of the Counselor's anti-corruption role, acknowledging it was a function -- not a position -- that must be "neutral, independent, and impartial." Sok An stated the Royal Government of Cambodia (RGC) had already given extensive reflection to this new anti-corruption mechanism. At a dinner after the Sok An meeting, Ambassador Williamson briefed six Phnom Penh Chiefs of Mission on the outcome and outlined next steps. All eight envoys at the dinner agreed that the list of Cambodian candidates who were independent and seen to have integrity was not long and that some among the donors might suggest candidates directly to Sok An. END SUMMARY.

Happy With the Proposal, Consulted with Donors Already  
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13. (C) Sok An energetically launched into his second meeting with Ambassador Williamson, saying that he was happy with the proposed anti-corruption Counselor outlined in their May 20 exchange (Ref A). He also outlined a "very good discussion" he had on the afternoon of May 21 with the seven Phnom Penh donors (Japan, France, the U.K., Australia, U.S., EU and Germany). "I told the donors that we had a good meeting and that I essentially agree with the idea (of an independent Counselor)," he said. Already, the RGC was continuing consultations on the Counselor, for which it had developed desired qualifications. Explaining a list of criteria, Sok An said the candidate should have high integrity and a good reputation, be aware of Cambodia's reality, have relevant professional qualifications and experience, good communications style, be able to relate to all employees at the court, and be acceptable to both the RGC and the UN.

14. (C) Sok An said that he had requested the ECCC personnel chief to send to donor missions the c.v. of Council of Ministers Secretary of State Chan Tani. However, Sok An was aware that there should not be a single candidate and proposed to speak to Taksoe-Jensen about the process but would provide a list of at least three candidates. Sok An said that a second choice was Mr. Uth Chhorn, Auditor General of the National Audit Authority of Cambodia. A third choice should be a woman; therefore he was proposing Helen Jarvis (NOTE: the former ECCC Public Affairs officer on the Cambodian side, newly assigned to head the ECCC Victims Unit. END NOTE.). "I did not tell her beforehand," he said calmly, as Helen Jarvis, sitting to Sok An's immediate right showed signs of shock at the announcement. Noting that Chan Tani

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had practiced law in the U.S. and that Helen Jarvis was a dual Cambodian-Australian citizen, Sok An stated that the list was multinational.

Wait for Taksoe-Jensen to Weigh In  
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15. (C) Noting appreciation for the extensive thought put into the new proposal in such a short time, Ambassador Williamson stated the qualifications mentioned were significant and that independence would be particularly important. Ambassador Williamson said that his only immediate concern was that he had not yet spoken in detail with Taksoe-Jensen about the mechanism to select candidates, and that he did not want to go further in his discussions with Sok An and agree to something that he was not sure Taksoe-Jensen would support. He indicated that it had been tough getting the UN to the point where they were prepared to agree to an independent Counselor and the fact that this individual should preferably be Cambodian. He said that, having come this far, he did not want the process to break down by delivering Taksoe-Jensen a fait accompli with the manner of selection and identity of the Counselor pre-determined. Thus, he wanted to talk to Taksoe-Jensen to review the concept and next steps well before discussion of individual candidates. Ambassador Williamson would then relay to Ambassador Rodley any feedback.

16. (C) Sok An said that wanted also to address how the Counselor would be paid. If paid by only one side, the Counselor could be viewed as "one-sided", he said. Ambassador Williamson suggested that one possibility might be to have each side contribute fifty percent of the salary -- an option to which Sok An seemed amenable. Sok An added that the position would not require a big office and perhaps only a private secretary. Anybody who wished to complain would then have two chances, he noted. They could visit the office at the ECCC, or they could ask for a private meeting elsewhere. If they chose to be anonymous, they could telephone the Counselor directly, he emphasized. It could work very simply, he observed.

An Independent Function

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17. (C) Ambassador Rodley related that she had communicated with most of the Phnom Penh chiefs of mission and that just about all donors noted there was one qualification important to them: independence. We would need to add that qualification to the list, she said. The Counselor would need to be, and to be seen to be, independent; to that end, she underscored that Sok An's verbal characterization was essential to the list of qualifications: "neutral, independent, and impartial." (COMMENT: This criterion effectively eliminates two of the three candidates, as both Chan Tani and Helen Jarvis report directly to Sok An. END COMMENT.) Ambassador Rodley added that the Phnom Penh donors underscored the need for a longer list or a more consultative process to review names. (NOTE: Sok An seemed to take the comment on board, noting that in the end only one name would be chosen as Counselor and the work of the ECCC would go forward. END NOTE.)

18. (C) Adding to Ambassador Rodley's remarks, Ambassador Williamson said that as the anti-corruption mechanism is explained to the public, and particularly to NGO's, it would be important to defend the position and especially the person filling it. Earlier proposals for the anti-corruption mechanism were seen as widely transparent, but now it would be different -- more discrete. Thus it was very important that the person chosen have a solid reputation so as to instill confidence and trust in the process. The profile of the Counselor's characteristics would help in that process, he noted. Ambassador Rodley added that in the "small house" of the ECCC people should think of the Counselor not as a position but a function that needed to be fulfilled.

#### A Review of the Proposal

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19. (C) To ensure clarity about the proposed role, which he said he would not at this stage share with NGO's, Ambassador Williamson outlined the Counselor position:

- An independent Counselor, whose status in this role would be neither as a UN employee, nor as an employee of the Cambodian side of the ECCC;
- Mechanism of payment still needed to be worked out;
- The Counselor could receive complaints, on a confidential basis, from any party at the ECCC about misconduct -- from the UN or Cambodian sides;
- After receiving a complaint, the Counselor would first go to the person accused of wrongdoing, ascertain the facts, and counsel them, advising not to continue any wrong acts;
- If direct counseling was not effective, then the Counselor would consult with Sok An (for Cambodian employees) or Peter Taksoe-Jensen (for international side employees) and request intervention to stop the wrongdoing;
- Sok An and Peter Taksoe-Jensen would have to list the terms of reference of the Counselor in which there would be, among other things, constraints on interactions with the press, and no public statements about what the Counselor was doing.
- Only after the intervention did not succeed would some type of investigation proceed, and perhaps it would be conducted by the Joint Sessions.

10. (C) Sok An, noting the need for independence and neutrality, reviewed a search his office had done of Cambodian institutions, including the Constitutional Council and the National Audit Authority (NAA). It turns out that the Constitutional Council members are prohibited from taking on other roles in government, he said. But the Auditor General of the National Audit Authority can play the role of a Counselor at the ECCC, he noted. Legally the NAA is an independent institution not bound by the National Assembly. Although they do not want to do the job, the NAA head told Sok An that he would agree to the work, "if you need us."

## Could Taksoe-Jensen Propose Names?

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¶11. (C) Ambassador Williamson reiterated that he would consult with Taksoe-Jensen about the proposed process and relay any message through Ambassador Rodley. If Taksoe-Jensen had any other thoughts on the process, Ambassador Rodley would relay these to Sok An, he said. Ambassador Rodley added that Taksoe-Jensen might have questions. For example, Taksoe-Jensen might have names of his own; she inquired if Sok An would be open to hearing those names. Sok An noted that judges at the ECCC were nominated by the UN Secretary General and that the RGC's Supreme Council of the Magistracy then formally appointed the judges to serve in the Cambodian national court system. (NOTE: Article 3 of the UN-RGC agreement. END NOTE.) The Cambodian government would likely follow a similar process to prepare a list of Candidates for anti-corruption Counselor, he said. Then Taksoe-Jensen could review the candidates and select a name from the list, he concluded. Ambassador Williamson noted that there was a degree of reciprocity in that former process that would not be present here. He said that he would nevertheless discuss the idea with Taksoe-Jensen. Ambassador Williamson reiterated that Taksoe-Jensen will be cognizant of the Counselor's personal reputation in Cambodia and therefore might be compelled to participate in the process of selection. While there was no telling what Taksoe-Jensen's reaction might be, Sok An should be prepared to discuss further this process, he said.

¶12. (C) In a closing pitch in which he said "everything is smooth," Sok An spoke at length about the sterling qualities of Auditor General Uth Chhorn, who had a high reputation at the National Audit Authority to protect and would therefore do nothing wrong. "He would not undermine his high position by doing any bad things at the ECCC," he said. He could also give good advice and find ways to advise and counsel individuals at the ECCC, Sok An concluded. In a brief exchange on how to handle the press, Ambassador Williamson assured Sok An that the USG would maintain confidentiality on

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this new proposal. Sok An agreed, but added that he would refer to Ambassador Williamson's facilitation of the process by which the UN and the RGC could resume talks.

Ambassadors: We Have the What, Now Who?

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¶13. (C) That same evening, Ambassador Williamson briefed the other six donors at a dinner hosted by Ambassador Rodley. Discussion had moved beyond the now widely accepted anti-corruption Counselor role to the critical question of who could fulfill that function. All agreed that Chan Tani and Helen Jarvis were not acceptable candidates. The French Ambassador said that he had pressed Sok An to look at another female candidate -- Kim Sathavy -- who is currently a supreme court justice, has impressive credentials and is considered to be an "honest judge." Sok An indicated he would try to do so, but the French Ambassador did not know if she would accept the offer, or if there were other difficulties with the possible appointment. The Australian Ambassador mentioned Neav Chanthana, the Deputy Governor of the National Bank of Cambodia in charge of its financial investigations unit. The Japanese Ambassador mentioned a retired official who had been educated in France. But, by and large, the group of Ambassadors agreed that the exercise of choosing someone with a reputation for integrity who could live up to the terms of the Counselor job would not be easy. A number of Ambassadors agreed that Sok An would need to be coached to include on the list candidates that the UN might propose as suitable.

Comment

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¶14. (C) The timing of Ambassador Williamson's visit was perfect, and we remain convinced that Sok An was ready, willing and able to move the process forward based upon the trusted network he has developed with the U.S. and other donors and a viable compromise proposal from the UN. There is no doubt the Counselor position will face some opposition from some NGO's but the role has every prospect of serving well the preventative function it is meant to fulfill. The biggest obstacle appears to be finding a candidate who is worthy of the role. The Auditor General, who has served in that role since 2001, is reported to be tough on foreign company concessions working in Cambodia. We are unfamiliar with the French favorite but do not take lightly the "honest judge" title she apparently has earned. Post will share with the Desk other candidacies as they surface, and will continue to consult with other donor Ambassadors toward this end. But, for the moment at least, the "deadlock" over a credible anti-corruption mechanism that has largely eclipsed the good work on the judicial side of the ECCC is a deadlock no more.

¶15. (U) Ambassador Williamson has cleared this cable.  
RODLEY